

OFFICE OF THE GENERAL COUNSEL

**MEMORANDUM GC 06-07**

DATE: September 13, 2006

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Ronald Meisburg, General Counsel

SUBJECT: Procedural Initiatives in Election Cases

As explained in Memorandum GC 06-05, First Contract Bargaining Cases, April 19, 2006, one of the important priorities during my term as General Counsel is to ensure (1) that employees have freedom of choice as to whether and by whom they will be represented for purposes of collective bargaining, based on a timely opportunity to vote in Board-conducted elections in an uncoerced atmosphere and (2) that their decision in an election is protected by this Agency.

The agency has long had measures aimed at expediting the resolution of election issues. Indeed, one of our GPRA goals is the expeditious processing of technical Section 8(a)(5) cases. After careful consideration, I believe that we can further expedite the processing of these cases after Board decision and during the court phase of the proceeding. With respect to casehandling goals and that judicial review phase, I have decided to adopt the following procedural changes, changes that will greatly assist in bringing the cases before the courts with the expedition they deserve.

a. Our experience has shown that, once the Board's technical 8(a)(5) decision issues, the likelihood of voluntary compliance with that decision is extremely small. Indeed, the employer has set the technical 8(a)(5) process in motion essentially to secure court review of the Board's underlying representation decision.<sup>1</sup>

Accordingly, when the Regional Office receives the Board's technical 8(a)(5) decision, it should immediately contact the employer's representative by telephone or e-mail in order to determine whether there will be compliance with the Board order. The employer's representative should be informed that, absent agreement to comply, the case immediately will be referred to the Board's Appellate Court Branch for court enforcement. Unless it receives assurances of

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<sup>1</sup> Our experience is that rarely, if ever, is there compliance with Board orders in technical refusal to bargain cases. Thus, in FY2005, of 19 bargaining orders in technical 8(a)(5) cases, all were subjected to court review by either the employer's petition for review or the Board's application for enforcement.

compliance in the meantime, the Regional Office should then refer the case to the Appellate Court Branch for enforcement within 7 calendar days of its receipt of the Board's decision. This significantly lessens, for technical 8(a)(5) cases, the 30-day period that the Regions customarily use to determine whether respondent will voluntarily comply with a Board order. While that customary period serves a number of practical purposes in ordinary unfair labor practice cases, technical 8(a)(5) cases are different. They are the statutorily prescribed means by which employers may obtain court review of certification decisions. Accordingly, as our experience has shown, it makes sense to act on the probability that the purpose of the "refusal to bargain proceeding" was to secure court review of the certification and to promptly begin that process.

b. The Regional Office is also instructed to send the representation case file to the Appellate Court Branch at the same time as it sends that Branch its enforcement recommendation. Expedited transmission of the record will enable the Appellate Court Branch to file the record with the court sooner than the 40 days after the commencement of the court enforcement action allowed by Federal Rule of Appellate Procedure 17. This will permit the merits review process to start more expeditiously.

c. In appropriate cases, the Appellate Court Branch will file with the court a motion to expedite the processing of the enforcement action. Cases where the agency has moved expeditiously by reference to our own GPRA standards are obviously cases where we will be in a good position to ask the court to move promptly as well. In exceptionally strong cases, such as where the facts are undisputed and the legal issues are limited and clear, the Appellate Court Branch will consider filing a threshold motion for summary enforcement. See NLRB. v. Roberta Hotel, Inc. d/b/a War Bonnet Inn, No. 95-70341 (9th Cir. July 20, 1995) (order granting summary enforcement).

If you have any questions concerning this initiative, please contact the Appellate Court Branch. I greatly appreciate your efforts to accomplish the goals identified in this memorandum.

/s/  
R.M.

cc: NLRBU  
Release to the Public

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